

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED

NOV 19 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
INFORMATION TECHNOLOGY DEPARTMENT)	File No. SLD-245592
STATE OF NORTH DAKOTA)	
Bismarck, North Dakota)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

To The Commission

**PETITION FOR RECONSIDERATION
AND INVOCATION OF RIGHTS UNDER
THE PAPERWORK REDUCTION ACT, 44 U.S.C. § 3512**

**INFORMATION TECHNOLOGY DEPARTMENT
STATE OF NORTH DAKOTA**

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November 19, 2003

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SUMMARY

This timely filed Petition seeks reconsideration of the Commission's denial of review (Commissioners Copps and Adelstein dissenting and issuing a Joint Statement) of an Order of the Wireline Competition Bureau denying North Dakota's request for review of the SLD's rejection of FCC Form 471 applications for program Year 4 filed on behalf of all public schools in North Dakota. The sole basis of the denial was because the mailing of the Block 6 Certifications and Item 21 attachments were not "postmarked" before the end of the Year 4 filing window ending January 18, 2001.

This "NEW and FIRM" filing requirement for Year 4 mandating the mailing and "postmarking" of the paper documents by the close of the filing window was never approved by the Office of Management and Budget ("OMB"), as required by the Paperwork Reduction Act. Instead of seeking OMB approval for the "NEW and FIRM" information collection requirement, the FCC erroneously sought OMB approval only for the extension of the pre-existing requirements. Accordingly, pursuant to the express terms of the Paperwork Reduction Act, North Dakota may not be penalized for failure to adhere to the new requirement and its application is required to be considered on its merits by SLD.

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Support Mechanism)	
To The Commission		

**PETITION FOR RECONSIDERATION
AND INVOCATION OF RIGHTS UNDER
THE PAPERWORK REDUCTION ACT, 44 U.S.C. § 3512**

Pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 3512 of the Paperwork Reduction Act, 44 U.S.C. § 3512, the State of North Dakota, Information Technology Department ("North Dakota"), hereby requests reconsideration of the Commission's Order, FCC 03-240, released October 21, 2003 (Commissioners Copps and Adelstein dissenting and issuing a Joint Statement)("FCC Order"), denying review of an Order of the Wireline Competition Bureau, Telecommunications Access Policy Division, DA 02-956, released April 24, 2002 ("Bureau Order").

**I. RECONSIDERATION IS REQUIRED UNDER
THE EXPRESS PROVISIONS OF THE PAPERWORK
REDUCTION ACT.**

Both the FCC Order and the Bureau's Order declined to review the rejection by the School and Libraries Division ("SLD") of the Universal Service Administrative Company of North Dakota's application for Year 4 funding solely because the mailing of the Block 6 Certifications and Item 21 Attachments were not postmarked before the end of the Year 4 filing window on January 18, 2001. This "postmarked" mailing deadline was a new requirement for program Year 4 which added another layer of complexity to the filing process and narrowed the filing window. In prior years, applicants filing electronically were accorded a reasonable period after the close of the filing window in which to submit the required paper documentation by mail or other mode of delivery.¹

The 3-member majority FCC Order found that North Dakota had presented no special grounds to "circumvent" established program rules. Based on the finding that applicants were "explicitly informed" of the new postmarking requirement through SLD website publications and a November 6, 2000 letter to prospective applicants, the FCC Order concluded that all applicants including North Dakota should not have been confused by the new information collection requirement. And "in order for the program to be administered in an efficient and equitable basis, applicants must take responsibility for submitting a complete and timely application in accordance with program rules." FCC Order, ¶17.

In their joint dissenting statement, both Commissioners Copps and Adelstein were troubled over the "complexity and rigidity" of an application process that sometimes works to

¹ For Year 3, for example, the deadline for paper documents for electronic filers was receipt by the SLD by January 31, 2000, 12 days after the close of the application-filing window. See *Certification Deadline Extended, What's New at SLD web site Section*, January 2000.

prevent realization of the objectives of the E-Rate Program. This was “surely the case with this application filed on behalf of the students of North Dakota.” As further summarized in their joint dissenting statement:

“The State of North Dakota filed an electronic application for E-Rate discounts within the filing window, but failed to mail signed certification until after the window closed. This oversight should not be allowed to exclude the children of North Dakota from access to the necessary tools of the Information Age.”

It is not applicants like North Dakota, but actually the FCC, that erred with respect to the new “postmarking” requirement. As hereinafter shown, the imposition of this confusingly new information collection requirement violated the express statutory requirements of the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. §§ 3501, *et seq.* (hereinafter “PRA”). This new information collection requirement was not approved by the Office of Management and Budget (“OMB”), as required by the PRA, 44 U.S.C. § 3507(h)(3). That Section provides, in pertinent part

An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director [of the Office of Management and Budget], *unless the modification has been submitted to the Director for review and approval* under this subchapter. (emphasis added).

The new “postmarking” requirement constituted such a substantive and material change. It is therefore unenforceable as a matter of law and cannot serve as the basis to deny an application.

The PRA, 44 U.S.C. § 3512(a), provides in pertinent part that “notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information . . . if – (1) the collection of information does not display a valid control number assigned by the Director [of OMB] in accordance with this subchapter” Further, subsection (b) expressly provides that “the protection accorded by this section may be raised in the form of

a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.” North Dakota hereby expressly invokes the protections required by law with respect to the unlawful imposition of the new and unapproved information collection requirement by the SLD and FCC

The full extent of protection required by Section 3512 has been expressly recognized by the Commission in similar circumstances where the OMB approval was not obtained prior to the implementation of a revised information collection requirement. In *Portland Cellular Partnership, et al.*, 11 FCC Rcd. 19997 (1996), *aff’d sub nom, Saco River Cellular, Inc. v. FCC*, 133 F.3d 25 (D.C. Cir. 1998), *cert. denied*, 525 U.S. 813 (1998), the Commission held that an applicant whose application had been dismissed for failure to submit required financial information could not be so penalized because the information collection requirement had not been approved by OMB. As held by the Commission in *Portland Cellular Partnership*, the dismissal of an application is just the “ . . . sort of ‘penalty’ precluded by Section 3512. See 44 U.S.C. § 3502(14); 5 C.F.R. § 1320.3(j) (1995) . . . Where an information collection requirement lacks required OMB approval, we must permit the applicant to provide or satisfy the legal conditions in any reasonable manner.” 11 FCC Rcd. at 20007-20008.²

II. THIS PETITION IS TIMELY FILED.

As held by the Commission in *Portland Cellular Partnership*, the broad protections afforded by Section 3512 may be raised at any time in the administrative process, even if the petition or request would not otherwise be allowable under FCC rules or statutes governing the

² See also *Fair Oaks Cellular Partners*, 10 FCC Rcd. 9980 (1995), and *Kent S. Foster*, 7 FCC Rcd. 7971, 7972 (1992) (“we conclude that Section 22.917(c)(5) has been so substantially and materially modified as to render the rule, as a whole, unenforceable under the PRA because of our failure to comply with PRA requirements in adopting the rule. Accordingly, we find that Petitioners’ applications should be reinstated and returned to pending status.”)

administrative process. 11 FCC Rcd. at 20001-2005. This petition is being submitted within the 30 day period in which parties may request reconsideration under Section 405 of the Communications Act and Section 1.106 of the Commission's rules and is therefore timely. Furthermore, to the extent certain provisions of Section 405 Of the Communications Act or Section 1.106(b) of the Commission's rules might be construed to limit the circumstances in which a denial of an application for review by the Commission is subject to reconsideration, these provisions are superceded by the express mandate of Section 3512 - - "Congress deliberately devised a remedy enabling the public to raise PRA violations without limitation, so long as the administrative or judicial process in connection with a particular license or with a particular application continues." *Portland Cellular Partnership*, 11 FCC Rcd. at 20003.

III. THE NEW AND MORE STRINGENT "POSTMARK" FILING REQUIREMENT FOR THE SUBMISSION OF PAPER DOCUMENTS WAS NOT APPROVED BY THE OFFICE OF MANAGEMENT AND BUDGET (OMB), AS REQUIRED BY THE PAPERWORK REDUCTION ACT.

It is undisputed that the required "postmarking" of the Block 6 Certification and Item 21 attachments by the close of the filing window is a new requirement for program Year 4. The SLD website publication cited by the Commission is clear on that point: "Year 4 features NEW and FIRM filing requirements." FCC Order, ¶15 (emphasis in original). It is also clear that the NEW and FIRM information collection procedure constituted a substantial change from past procedures, which made the filing process more difficult, risky and burdensome. The new and OMB unapproved requirement made two significant changes. First, to be considered timely, everything had to be done by the close of the filing window. Second, instead of defining completion as SLD receipt of the mailed documents, the website directions narrowed the

definition of completion to being placed in the mail and “postmarked” by the close of the window. To comply, applicants were thus required to adjust their existing compliance procedures and obtain, file and retain new paperwork – the postmark of the mailing.³

The magnitude of the change is shown both by the estimated 3,000 applicants who failed to note and follow the new information collection procedure and the draconian penalty imposed, the automatic rejection of the application. While the FCC Order attempts to minimize the impact of the change and, indeed, paint it as a benefit to applicants (FCC Order, n. 13), the plain fact is that the NEW and FIRM requirement added a further level of complexity to an already difficult to navigate process that disadvantaged thousands of applicants.⁴

The new requirement constituted a substantive and material change in an “information collection” requirement with the scope of the Paperwork Reduction Act. Under OMB rules, a collection of information is broadly defined to include “any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.” 5 C.F.R. § 1320.3(c). Further included within the definition is both “the act of collecting and disclosing information” and any “plan and/or other instrument calling for the collection or disclosure of information . . .” 5 C.F.R. §§ 1320.3(c).

Furthermore, Section 3502(2) of the PRA, 44 U.S.C. § 3502(2), specifically defines the “burden” that the PRA is intended to minimize to include the transmitting of the information and the adjusting of existing procedures to comply with a changed information collection

³ In several cases, the FCC has emphasized the importance of retaining the new paperwork to prove compliance. See e.g. *Jaffrey-Rindge Cooperative School District*, DA 02-1227, released May 23, 2002, ¶ 4.

⁴ At this point, over 15 appeals of this new requirement by disadvantaged applicants have been denied by the FCC. In addition, North Dakota is aware of at least two pending requests for FCC review of the new requirement that have expressly advised the Commission of its failure to implement the new requirement in a lawful manner under the PRA. See Request for Review, filed June 7, 2001 by Madera Unified School District, and Request for Review and Waiver, filed September 7, 2001 by Consorcio de Escuelas y Bibliotecas de Puerto Rico. These pending requests for review have not been acted upon within the 180 day period required by Section 54.724 of the Commission’s Rules to the further disadvantage of applicants.

requirement. Specifically, Section 3502(2) provides that a “burden” within the scope of the PRA includes

- “reviewing instructions;” (44 U.S.C. § 3502(2)(A))
- “adjusting the existing ways to comply with any previous applicable instructions and requirements;” (44 U.S.C. § 3502(2)(C))
- “transmitting, or otherwise disclosing the information;” (44 U.S.C. § 3502(2)(F)).

By these and other “descriptive examples of actions that constitute burden imposed by collections of information . . .,” Congress intended the PRA “to cover all burdens associated with information collection.” Paperwork Reduction Act of 1995, *H. R. Rep. No. 104-37*, 104th Cong., 1st Sess., p. 35

What then did the FCC do to obtain OMB review of, and approval for, the substantial change in information collection requirements? The simple answer is not a thing. While the new requirement was publicized by SLD in the context of certain website and other informal documents,⁵ OMB was never asked to review or approve the new and more burdensome requirement before it was instituted. Neither the website announcement of a NEW and FIRM Form 471 filing requirement, nor the November 6th mailing to prospective applicants relied upon in the FCC Order, were reviewed or approved by OMB.⁶

Rather, for Year 4 Form 471 filings, OMB approval was requested only for an extension of the previously approved Form 471 and collection procedures for program Year 3. Exhibit A

⁵ Form 471 Minimum Processing Standards and Filing Requirements for FY4, Filing Requirements for Forms 471 Filed Manually and Online, Items 1 and 3, Tips For Completing Your Form 471, Tip 2, and Pitfalls to Avoid in Filing Form 471, Items 1 and 3. To the best of our knowledge, none of these documents imposing the additional and more restrictive filing requirement was approved by OMB under the Paperwork Reduction Act or bore an OMB Control Number and other required notifications, as required by 44 U.S.C. § 3507(a)(1)(3).

⁶ OMB approval requirements apply not only to an information collection form such as Form 471, but also to any other action imposing new or modified information collection requirements, including the adoption of a rule or issuance of a letter or other publication. 5 C.F.R. § 1320.3(c), and *Portland Cellular Partnership*, 11 FCC Rcd. at 20006.

attached hereto is a copy of the FCC's Paperwork Reduction Act Submission (OMB 83-1), dated July 21, 2000, with respect to the FCC Form 470 and 471 (OMB Control Number 3060-0806) information collection for program Year 4. Therein, approval was sought in item 3 only for the "extension of a currently approved collection." The instructions to the OMB form which are included as Exhibit B indicate that the Extension box is to be checked "when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instruments, instructions, frequency of collection, or the use to which the information is put." Instruction 3c. This is to be contrasted to the instructions directing the agency to request a revision in a currently approved collection requirement for a "material change to the collection instrument, instructions, its frequency of collection." Instruction 3b. It is also noteworthy that FCC's application sought continued approval not to display the OMB approval expiration date on the form, as that would require the destruction of unused forms. This request further suggests the continuing use of the then current form and instructions with no changes whatsoever.

Thereafter, public notice of the FCC's request for an extension of the previously approved OMB Information Collection was given in the Federal Register on July 28, 2000. This notice is attached as Exhibit C. Again, only an "extension of a currently approved collection" was publicly noticed. And it was this request for extension of the then existing Form 471 collection requirement that was approved by OMB by letter dated September 1, 2000 (Exhibit D hereto). With respect to the 471 application form for Year 4 used by North Dakota and other applicants in the filing window, no further application or request for change was submitted to OMB.

The previously information collection requirement for which the FCC requested and received an extension from OMB for the Year 4 Form 471 application provided as follows, in pertinent part, with respect to the submission of paper documentation:

Electronic Filing Instructions. You may complete and submit the Form 471 by filing the Form electronically online at the SLD Web Site, <www.sluniversal.org>. If filing your Form 471 electronically, you must also complete and mail to the SLD the following documents in order to successfully complete the submission of your Form 471 application:

- the Item (21) description(s) of services, and
- a paper copy of the Block 6 Certification, completed and signed with an original ink signature.

The pertinent section of the Year 3 Instructions is attached as Exhibit E. Obviously, on its face, it imposed no firm or specific deadline for the submission of paper documentation, let alone a requirement the submission be “postmarked” prior to the close of the filing window. Rather, it only advised applicants of the need to submit the paper documentation to complete the process, without specifying any deadline or required mode of submission by the close of the filing window.⁷

Because OMB approval for the NEW and FIRM information collection procedure was neither requested nor obtained, the SLD website and other publications that purported to communicate the changed information collection requirements obviously could not have displayed a “valid control number” as required by the PRA. The violation is further compounded by the failure of the SLD website and other documentation relied upon in the FCC

⁷ It should also be noted that one modification was made without OMB approval in the actual set of Instructions accompanying the Form 471 for Year 4. The final sentence in the first quoted paragraph above was revised to read “If filing your Form 471 electronically, you must also complete and mail to the SLD the following documents in order to successfully complete the submission of your Form 471 application within the application window.” This modified text did not specify a time deadline for the submission of the paper documents, nor describe the NEW and FIRM “postmarking” requirement posted on the SLD website.

Order to display any control number, whether valid or invalid, and advise potential applicants of their rights under PRA. Neither the website publication, nor to the best of North Dakota's knowledge the November 6th Letter, included an OMB control number or other required PRA disclosures in further violation of 44 U.S.C. § 3512(b).

Nor for that matter did the electronic version of the Form 471 used by North Dakota to file its application display any control number, valid or otherwise. As shown in Exhibit F, no OMB control number is displayed on any portion of the electronic version of the form. The failure to display any control number, by itself, is a violation of the PRA and the express conditions attached by OMB to the use of Form 471. See Exhibit D, Paperwork Review Worksheet, p 2. Even if OMB approval for the new "postmarking" had been obtained (which is not the case), the basic requirements of PRA would not have been satisfied in this instance.

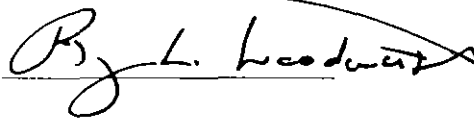
III. CONCLUSION.

One of the primary purposes of the PRA and the OMB review and approval process is to "minimize the paperwork burden for . . . State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;" 44 U.S.C. § 3501(1). In this case, the PRA process was circumvented and a new and more burdensome requirement hastily imposed with no independent OMB review. The issue is not what OMB would have done, were it given the opportunity to review the change, or whether applicants had "explicit notice," but that the review process required by statute was circumvented. Just as the FCC expects its applicants to "comply with program rules" (FCC Order, ¶11), the public has a right to expect the FCC to comply with laws enacted by Congress to ensure fair and reasonable information collection requirements.

For these reasons, the rejection of North Dakota's application is wrong as a matter of law under the clear and express requirements of the Paperwork Reduction Act and must be reversed. The SI.D should be directed to reinstate North Dakota's application for normal consideration as a timely filed application within the Year 4 filing window.

Respectfully submitted,

**INFORMATION TECHNOLOGY DEPARTMENT
STATE OF NORTH DAKOTA**

By. 

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November 19, 2003

EXHIBIT A

PAPERWORK REDUCTION ACT SUBMISSION (OMB FORM 83-1, OMB CONTROL 3060-0806, FCC FORMS 470 and 471), DATED JULY 20, 2000, FOR EXTENSION OF CURRENTLY APPROVED COLLECTION

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two (2) copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW Washington, DC

1. Agency/Subagency originating request Federal Communications Commission Common Carrier Bureau	2. OMB control number a. 3060 - 0806 b. <i>None</i>
3. Type of Information collection (check one) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of currently approved collection d. <input type="checkbox"/> Reinstatement without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without OMB control number For b-f, note Item A2 of Supporting Statement Instructions	4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular Submission b. <input type="checkbox"/> Emergency - Approval requested by <i>7/1/96</i> c. <input type="checkbox"/> Delegated
	5. Will this information collection have a significant impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other: _____

7. Title Universal Service - Schools and Libraries Universal Service Program
8. Agency form number(s) (if applicable) FCC Forms 470 and 471

9. Keywords 'reporting requirements, universal service, support, schools, libraries, telecommunications carriers, Telecommunications Act of 1996'
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10. Abstract The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access, and internal connections. The information is used to determine eligibility.
--

11. Affected public (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Individuals or household b. <input checked="" type="checkbox"/> Business or other for-profit c. <input checked="" type="checkbox"/> Not-for-profit institutions d. <input type="checkbox"/> Farms e. <input type="checkbox"/> Federal Government f. <input checked="" type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (check one) a. <input type="checkbox"/> Voluntary b. <input checked="" type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
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13. Annual recordkeeping and reporting hour burden a. Number of respondents <u>60,000</u> b. Total annual responses <u>60,000</u> 1. Percentage of those responses Collected electronically <u>90</u> % c. Total annual hours requested <u>440,000</u> d. Current OMB inventory <u>440,000</u> e. Difference (+, -) <u>0</u> f. Explanation of difference 1. Program change (+, -) <u>0</u> 2. Adjustment (+, -) <u>0</u>	14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference (+, -) <u>0</u> g. Explanation of difference 1. Program change (+, -) <u>0</u> 2. Adjustment (+, -) <u>0</u>
--	---

15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Application for benefits b. <input type="checkbox"/> Program evaluation c. <input type="checkbox"/> General purpose statistics d. <input type="checkbox"/> Audit e. <input type="checkbox"/> Program planning or management f. <input type="checkbox"/> Research g. <input checked="" type="checkbox"/> Regulatory or compliance	16. Frequency of recordkeeping or reporting (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping b. <input checked="" type="checkbox"/> Third Party Disclosure c. <input checked="" type="checkbox"/> Reporting: 1. <input checked="" type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other
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17. Statistical methods Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18. Agency contact (person who can best answer questions regarding the content of this submission). Name: <u>Adrian Wright</u> Phone: <u>202-418-0854</u>
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OMB CONTROL NUMBER 3060- 0806	TITLE Universal Service - Schools and Libraries Universal Service Program
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19. Certification for Paperwork Reduction Act Submission

A. PROGRAM OFFICIAL CERTIFICATION (Internal FCC Use Only)

(1) Signature (FCC BIC Official)

[Handwritten Signature]

(2) Date

7/10/00

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instructions. The certification is to be made with reference to those regulatory provisions as set forth in the instructions

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication,
- (c) It reduces burden on small entities,
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents,
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under section 5 CFR 1320.8(b)(3) about:
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory)
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number.
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology (if applicable), and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

B. SENIOR OFFICIAL OR DESIGNEE CERTIFICATION

(1) Signature (FCC OMD)

[Handwritten Signature: Leslie J. Smith]

(2) Date

JUL 21 2000

3060-0806
July 2000

SUPPORTING STATEMENT

FCC Universal Service Forms: FCC Form 470 and Form 471.

A Justification

1. On November, 8, 1996, the Joint Board released a recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On May 8, 1997, the Commission adopted rules providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit FCC Forms 470 and 471.

a. Submission of FCC Form 470 "Description of Service Requested and Certification."

Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will post those Form 470 forms that request new services on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 C.F.R. § 54.505(b)(2), 47 C.F.R. § 54.504 (b)(3). Pursuant to section 254(h) of the Telecommunications Act of 1996, 47 U.S.C. § 254 (h), schools and libraries must certify under oath that: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for education purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 C.F.R. § 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e., primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school for the national school lunch program (or the other acceptable indicators of economic disadvantage determined by the Commission). This requirement arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or the other acceptable

indicators of economic disadvantages). This requirement also arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. 47 C.F.R. § 54.505(b)(1). Schools and libraries must also certify that they have developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 C.F.R. § 54.504(b)(2).

b. Submission of FCC Form 471 "Services Ordered and Certification."

Schools and libraries that have ordered telecommunication services, Internet access, and internal connections under the Universal Service Mechanism for Schools and Libraries must file FCC Form 471 with the Administrator. Form 471 requires schools and libraries to list all services that have been ordered and the funding needs for the current funding year. 47 C.F.R. § 54.504(b)(2). This form also gathers information from schools and libraries about the technology currently available to the entity and what is made possible by their application for universal service fund discounts.

2. All schools and libraries planning to order services eligible for universal service discounts must file FCC Forms 470 and 471. The purpose of this information is to help determine which schools and libraries are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 471. This requirement is designed to help schools and libraries avoid the waste that might arise from requests for services that the schools and libraries would be unable to use for the educational purposes intended.
3. Applicants will be able to electronically file or mail their submissions. Copies of the forms will be available via the Administrator's website.
4. There will be no duplication of information. The information sought is unique to each respondent and similar information is not already available.
5. Entities directly subject to the requirements in the forms are primarily schools and libraries. The forms have been designed to impose the least possible burden on the respondents.
6. Failing to collect the information, or collecting it less frequently, would prevent the Commission from implementing section 254 of the 1996 Act and ensuring that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.
7. Applicants are required to retain certain filings for five years. The records are needed in case the applicant is audited. If an applicant is audited, it should be able to demonstrate to the auditor how the entries in its application were provided.

8. Pursuant to 5 CFR 1320.8, the Commission placed a notice in the Federal Register. See 65 FR 3234, January 20, 2000. (Copy attached). No comments were received.
9. There will be no payments or gift to respondents.
10. The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under section 0.459 of the Commission's rules
11. There are no questions of a sensitive nature with respect to the information collected.
12. The following represents the hour burden on the collections of information:
 - a. Submission of FCC Form 470 "Description of Service Requested and Certification."
 - (1) Number of respondents: Approximately 50,000 public school districts, private schools and public library systems.
 - (2) Frequency of response: On occasion. Each school and library must submit FCC Form 470, describing the services desired, to the Administrator.
 - (3) Annual burden per response: 4 hours. The total annual hour burden is 200,000 hours. This estimate includes the time needed for complying with the record retention requirement.
 - (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$8,000,000.
 - (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 50,000 schools and libraries. $50,000$ (number of respondents) \times 1 (number of submissions required) \times 4 (hours to prepare form, including time for reading instructions) \times $\$40$ per hour (including administrative staff time and overhead) = $\$8,000,000$.
 - b. Submission of FCC Form 471 "Services Ordered, Certification, and Termination."
 - (1) Number of respondents: Approximately 60,000 public school districts, private schools and public library systems.
 - (2) Frequency of response: On occasion. Each school and library must submit FCC Form 471, describing the services desired, to the Administrator.
 - (3) Annual burden per response: 4 hours. The total annual hour burden is 240,000 hours. This estimate includes the time need for complying with the record retention requirement.
 - (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$9,600,000.
 - (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 60,000 schools and libraries. $60,000$ (number of respondents) \times 1 (number of submissions

required) x 4 (hours to prepare form, including time for reading instructions) x \$40 per hour (including administrative staff time and overhead) = \$9,600,000

Total Annual Burden = 200,000 + 240,000 = 440,000 burden hours.

13. (1) Total capital start-up costs component annualized over its expected useful life: \$0. The collections will not require the purchase of additional equipment.
(2) Total operation and maintenance and purchase of service component: \$0. The collections will not result in additional operation or maintenance expenses.
 - 14 There will be few, if any costs to the Commission because notice and enforcement requirements are already part of Commission duties. Moreover, there will be minimal cost to the Federal government since an outside party will administer this program.
 15. The public burden for the collections contained herein continues to be 440,000 burden hours. The collections are necessary to implement the universal service discount program for schools and libraries.
 16. The Commission will make the information required by 47 C.F.R. § 54.504 publicly available on the Internet. Other non-proprietary information will likely be made publicly available although the Commission does not have specific plans for doing so at this time.
 17. The Commission seeks continued approval to not display the expiration date for OMB approval of the information collections. Display of the expiration date on the forms and instructions would not be in the public interest because, after the six-month approval period, we would have to destroy all of the unused forms bearing the six-month expiration date. This would constitute waste and would not be cost effective.
 - 18: Applicants are required to retain certain records longer than three years. Applicants must retain records to be able to demonstrate to the auditor how the entries in their application were provided.
- B. Collections of Information Employing Statistical Methods.

The Commission does not anticipate that the collection of information will employ statistical methods.

EXHIBIT B

OMB FORM 83-1 INSTRUCTIONS

Instructions For Completing OMB Form 83-1

5. Small entities

13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers if a respondent is also a recordkeeper, report the respondent only once
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers
- Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is not considered an electronic submission
- Enter the total annual recordkeeping and reporting hour burden
- Enter the difference by subtracting line d from line c
- Record a negative number (d larger than c) within parentheses
- Explain the difference. The difference in line e must be accounted for in lines f and 12.
- "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes
- "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments
- Annual reporting and recordkeeping cost burden (in thousands of dollars)

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs
- Enter recurring annual dollar amount of cost for all systems or purchasing services
- Enter total (14 a. + 14 b.) annual reporting and recordkeeping cost burden
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995
- Enter the difference by subtracting line d from line c
- Record a negative number (d larger than c) within parentheses
- Explain the difference. The difference in line e must be accounted for in lines f and 12
- "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes
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- Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation, (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field, or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000
- Requested expiration date
- Check "Three years" if the agency requests a three year approval for the collection
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date
- Title
- Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others
- Agency form number(s) (if applicable)
- Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma
- Keywords
- Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text
- Abstract
- Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents
- Affected public
- Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X"
- Obligation to respond
- Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X"
- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent
- Mark "Required to obtain or retain benefits" when the response is effective, but is required to obtain or retain a benefit
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions

- Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation, (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field, or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000
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Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995

1. Agency/subagency originating request
Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary

2. OMB control number
a. If the information collection in this request has previously received or now has an OMB control or comment number, enter the number
b. Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency

3. Type of information collection (check one)

a. Check "New collection" when the collection has not previously been used or sponsored by the agency
b. Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument.
c. Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, frequency of collection, or the use to which the information is to be put.

d. Check "Restatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
e. Check "Restatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.

f. Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number
4. Type of review requested (check one)

a. Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule
b. Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval
c. Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority

EXHIBIT C

FCC PUBLIC NOTICE OF PAPERWORK REDUCTION ACT SUBMISSION, 65 F.R. 46459,
JULY 28, 2000